



**REQUEST FOR QUALIFICATIONS 580-20-RFQ-0019**

**FOR**

**EVALUATING THE ATTAINMENT OF ENVIRONMENTAL  
FLOW STANDARDS**

**CLASS-ITEM CODE(S): 925-35; 925-36; 925-97**

**RELEASE DATE: MAY 19, 2020**

**DEADLINE FOR SUBMISSION: JUNE 15, 2020, 2:00 PM (CDT)**

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**Solicitation point of contact:**  
**Angela Wallace, Contract Administration Manager, CTPM, CTCM**  
[angela.wallace@twdb.texas.gov](mailto:angela.wallace@twdb.texas.gov)

You, the respondent, are responsible for checking the Electronic State Business Daily (ESBD) website, <http://www.txsmartbuy.com/sp>, for any addenda to this Solicitation. Please search under Agency Code 580 (Texas Water Development Board). The Respondent's failure to periodically check the ESBD will in no way release that Respondent from any addenda or additional information resulting in additional requirements of the Solicitation.

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## SECTION I – EXECUTIVE SUMMARY, DEFINITIONS AND AUTHORITY

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### 1.1 EXECUTIVE SUMMARY

The Texas Water Development Board (TWDB) is requesting qualifications for the award of a service contract to: 1) conduct a study evaluating the attainment of environmental flow standards, using the daily Water Availability Models (WAMs) for the Brazos, Trinity, and Neches river basins, at measurement points on these rivers and at the inflow points to their respective bay/estuary under flow conditions ranging from partial to full utilization of water rights, and return flows associated with those water rights, ranging from current return flows to none; 2) produce a report synthesizing the results; and 3) produce a summary providing guidance to the Trinity-San Jacinto, Brazos, and Sabine-Neches Basin and Bay Area Stakeholder Committees on how findings of the assessment could be used to assess the need to revise existing instream and freshwater inflow standards (“the Project”).

TWDB will consider qualifications from business entities that demonstrate the ability to complete the Project within the guidelines of this Solicitation and any applicable federal, state, and local laws, rules, and regulations. Respondents must execute **Content Item 1, Execution of Response to the Request for Qualifications**, and complete other items listed under 4.1.B, Contents, to be considered. Additional information on TWDB and its programs can be found at <http://www.twdb.texas.gov>.

### 1.2 DEFINITIONS

“[ADA](#)” means the Americans with Disabilities Act.

“[Addendum](#)” means a written clarification or revision to the Request for Qualifications issued by the Texas Water Development Board. Respondents must acknowledge receipt of any addenda in the submission of the Solicitation Response.

“[Affiliate](#)” means any individual or entity that, directly or indirectly, controls, is controlled by, or is under common control with, Respondent. “Control” means the ability to directly or indirectly direct the management and policies of an entity, whether through the ownership of voting securities or membership interests, by contract, or otherwise.

“[Contract Documents](#)” means all documents that govern this Solicitation and any resulting contract, including, without limitation, the Project Manual, this Solicitation, the Architect/Engineer’s specifications and drawings, the Uniform General and Supplementary Conditions, Special Conditions, and all bonds and insurance.

“[Contract Price](#)” means the total compensation payable to Contractor for completion of the work in accordance with the terms of the contract.

“[Contractor](#)” means the Respondent(s) awarded a contract under this Solicitation.

“[ESBD](#)” means the Electronic State Business Daily, <http://www.txsmartbuy.com/sp>.

“[General Conditions](#)” means those items and related costs that are specified in this document.

“[HUB](#)” means Historically Underutilized Business as defined by Chapter 2161 of the Texas Government Code.

“[HUB Subcontracting Plan](#)” or “[HSP](#)” means the form required by Texas Government Code § 2161.252 and 34 Texas Administrative Code § 20.285 for each contract with an expected value of \$100,000 or more, in which Respondent must demonstrate a Good Faith Effort to subcontract with HUBs. The HSP must be included with the Solicitation Response.

“[Key Staff](#)” means experienced, professional and/or technical personnel who will have major responsibilities under the contract and/or provide unusual or unique expertise essential for successful completion of the work performed.

“[Notice to Proceed](#)” or “[NTP](#)” means written notice provided by the TWDB to begin construction of the Project.

“[PIA](#)” means the Public Information Act, Chapter 552 of the Texas Government Code.

“[Project](#)” means the work solicited under this Solicitation.

“[Respondent](#)” means the entity responding to this Solicitation.

“[RFQ](#)” means Request for Qualifications.

“[Solicitation](#)” means this RFQ.

“[Solicitation Response](#)” means the Respondent’s entire response to this Solicitation, including all documents requested.

“[SOQ](#)” means Statement of Qualifications.

“[State](#)” means the State of Texas and any state agency; the Texas Water Development Board or state agency identified in this Solicitation, its officers, employees, or authorized agents.

“[TAC](#)” means Texas Administrative Code.

“[TWDB](#)” means Texas Water Development Board.

### **1.3 BACKGROUND**

The 80th Texas Legislature in 2007 amended Texas Water Code § 11.0235 to establish a stakeholder-driven process for identifying and quantifying flow regimes needed to maintain sound ecological environments in Texas rivers and estuaries (hereafter referred to as the “environmental flows process”). Environmental flow recommendations from Basin and Bay Expert Science Teams (BBEST) and Basin and Bay Area Stakeholder Committees (BBASC) served as the basis for the adoption of environmental flow standards by the Texas Commission on Environmental Quality (TCEQ) between 2011 and 2014 in seven major river basins and five estuary systems.

A provision for adaptive management led to the development of Work Plans for Adaptive Management (hereafter referred to as “work plans”) by the BBASC groups that established a periodic review of the environmental flow regime analyses, recommendations, standards, and strategies. The work plans contain recommended studies and activities that, if implemented, are designed to provide additional information for consideration by TCEQ during future rulemaking. The TWDB has administered funding to implement work plan studies and to support the goals of the environmental flows process for adaptive management.

Since the standards were adopted, a comprehensive evaluation of the attainment of the environmental flow standards under existing and future conditions has not yet been completed. The purpose of this project is to develop and undertake a standardized methodology for assessing the attainment of the adopted environmental flow standards using daily Water Availability Models (WAMs) and to assist BBASCs with an understanding of how the key findings can be utilized in the adaptive management process. The daily WAM has the capability of simulating environmental flow standards, the metrics of which are primarily computed at the daily timestep. As such, the scope of this project is limited to river basins where daily WAMs are available and for which environmental flow standards were adopted. These include the Brazos, Trinity, and Neches river basins. However, the methodology developed in this project should be applicable as an approach for assessing environmental flow standards in other major river basins as daily WAMs become available.

## SECTION II – SCOPE OF WORK

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### 2.1 SCOPE OF SERVICES REQUESTED

The awarded Contractor must complete the following tasks:

#### Task 1 – Literature review and assessment methodology

The objective of this task is to: (1) complete a literature review of the methods and metrics available for assessing the attainment of environmental flow standards and (2) summarize which method/metric is the best for assessing the attainment of environmental flow standards in the Brazos, Trinity, and Neches river basins.

Work product must:

- 1) Summarize published literature, including but not limited to Pauls and Wurbs (2016), focusing on aspects that can inform the assessment of environmental flow attainment in the Brazos, Trinity, and Neches river basins.
- 2) Describe the methodology to be used to assess environmental flow attainment under four flow scenarios: (i) current water use; (ii) future water use (partial utilization of permitted diversions); (iii) future water use (full utilization of permitted diversions); and (iv) naturalized flow.
- 3) For each river basin, provide a map and a table listing the WAM control points for which environmental flow standards have been defined. Provide WAM control point number, the corresponding U.S. Geological Survey gauge number, gauge name, and contributing drainage area.
- 4) For each basin, provide in tabular form the metrics selected for assessing the attainment of instream flow standards.
- 5) For each basin, provide in tabular form the metrics selected for assessing the attainment of freshwater inflow standards.

#### Task 2 – Development of flow scenarios as described in Task 1 (for flow scenarios **not available for download** through the Texas Water Resources Institute, Texas A&M University).

Work product must:

- 1) For each basin, list the flow scenarios that (i) were obtained from the Texas Water Resources Institute (via download from the website <https://ceprofs.civil.tamu.edu/rwurbs/wrap.htm> or other means) or (ii) were developed as part of this Project.

- 2) For flow scenarios developed, describe the methodology.
- 3) Provide all flow datasets that were downloaded or developed for each scenario for each basin.

***PLEASE NOTE: Work associated with Task 2 will be contingent upon a written notice to proceed after the completion of Task 1.***

Task 3 – Assessment of environmental flow attainment in the Brazos River Basin

The objective of this task is to assess the attainment of environmental flow standards in the Brazos River Basin and to document results.

Work product must:

- 1) For each of the flow scenarios considered, summarize attainment of the environmental flow standards by season (where season is defined consistent with TCEQ environmental flow standards for the Brazos), flow type (*i.e.*, subsistence or pulse flows), and condition (dry, average or wet).
- 2) Describe the key findings and interpret the results focusing on the conditions under which attainment of the standards are met or not met. Include a discussion of the caveats or limitations of the method and model which should be taken into consideration when interpreting the results.

***PLEASE NOTE: Work associated with Task 3 will be contingent upon a written notice to proceed after the completion of Task 2.***

Task 4 – Assessment of environmental flow attainment in the Trinity River Basin

The objective of this task is to assess the attainment of environmental flow standards in the Trinity River Basin and to document results.

Work product must include the following:

- 1) For each of the flow scenarios considered, summarize attainment of the environmental flow standards by season (where season is defined consistent with TCEQ environmental flow standards for the Trinity), flow type (*i.e.*, subsistence, pulse flows, or freshwater inflows to Galveston Bay), and condition (dry, average or wet) (where these conditions are defined using a scientifically defensible metric).
- 2) Describe the key findings and interpret the results focusing on the conditions under which attainment of the standards are met or not met. Include a discussion of the caveats or limitations of the method and model which should be taken into consideration when interpreting the results.

***PLEASE NOTE: Work associated with Task 4 will be contingent upon a written notice to proceed after the completion of Task 3.***

Task 5 – Assessment of environmental flow attainment in the Neches River Basin

The objective of this task is to assess the attainment of environmental flow standards in the Neches River Basin and to document results.

Work product must include the following:

- 1) For each of the flow scenarios considered, summarize attainment of the environmental flow standards by season (where season is defined consistent with TCEQ environmental flow standards for the Neches), flow type (*i.e.*, subsistence or pulse flows), and condition (dry, average or wet) (where these conditions are defined using a scientifically defensible metric).
- 2) Describe the key findings and interpret the results focusing on the conditions under which attainment of the standards are met or not met. Include a discussion of the caveats or limitations of the method and model which should be taken into consideration when interpreting the results.

***PLEASE NOTE: Work associated with Task 5 will be contingent upon a written notice to proceed after the completion of Task 4.***

Task 6 – Summarize key findings from Task 3 through Task 5

The objective of this task is to synthesize the key results of the assessments of attainment of environmental flow standards in the Brazos, Trinity, and Neches river basins.

Work product must include the following:

- 1) A synthesis of the key findings.
- 2) Conclusions regarding conditions under which attainment of environmental flow standards are met or not met.

***PLEASE NOTE: Work associated with Task 6 will be contingent upon a written notice to proceed after the completion of Task 5.***

Task 7 – Guidance summary on how findings of the study can be utilized by the Brazos, Trinity-San Jacinto, and Sabine-Neches BBASCs

The objective of this task is to provide guidance on how each BBASC can utilize the findings of this study to determine whether environmental flow standards in their respective basins need revision.

Work product must include the following:

- 1) A summary of how the Brazos BBASC can utilize the findings of the study.
- 2) A summary of how the Trinity-San Jacinto BBASC can utilize the findings of the study.
- 3) A summary of how the Sabine-Neches BBASC can utilize the findings of the study.

***PLEASE NOTE: Work associated with Task 7 will be contingent upon a written notice to proceed after the completion of Task 6.***

Task 8 – Draft and Final Report

Deliverables must include the following:

- 1) One (1) digital version (PDF on flash drive) of the draft report submitted by the study completion date.
- 2) An appendix with TWDB comments and contractor response in the final report.
- 3) Four (4) hard copies and one (1) digital version (PDF on flash drive) of the final report submitted within 60 days of the study completion date.
- 4) Limit the use of abbreviations in the report. If needed, add a list of acronyms at the front of the report.

## Task 9 –Project Management

Deliverables must include the following:

- 1) Six (6) presentations to TWDB staff, one (1) after the completion of each Task (i.e., 1–6). TWDB will provide comments that must be addressed.
- 2) One in-person presentation at a stakeholder meeting approved by TWDB for each of the three basins (i.e., Brazos, Trinity, and Neches).
- 3) Participation in meetings and conference calls with TWDB staff as requested.
- 4) Monthly submittal of progress reports to the TWDB, to include:
  - a. Descriptions of tasks completed and in progress
  - b. Percent completion of tasks in progress
  - c. Updates to overall project schedule as warranted
  - d. Invoices at the satisfactory completion of each task (i.e., upon the receipt of notice-to-proceed on the subsequent task).
- 5) Detailed schedule based on project milestones.

## **Reference**

- Pauls, M.A. and Wurbs, R.A., 2016. Environmental flow attainment metrics for water allocation modeling. *Journal of Water Resources Planning and Management*, 142(8), p. 04016018.

## **2.2 REQUIREMENTS**

Respondents to this RFQ are required to have the following knowledge, skills and abilities:

- Technical staff with knowledge of and experience in TCEQ environmental flow standards and the process for obtaining a revision to the standards.
- Technical staff with knowledge and experience running daily Water Availability Models for Texas.
- Technical staff with the ability to understand, interpret, and analyze scientific data.
- Project management staff with the ability to meet strict deadlines, stay within budget, and communicate well with others.

## **2.3 SUBCONTRACTORS**

Subcontractors providing services must meet the same requirements as the Respondent. No subcontract should relieve the primary Respondent of responsibility for the service. If the Respondent uses a subcontractor for any or all work required, the following conditions must apply under the listed circumstances:

- (a) Respondents planning to subcontract all or a portion of the work must identify the proposed subcontractors on the HUB Subcontracting Plan.
- (b) Subcontracting must be at the Respondent's expense.
- (c) TWDB retains the right to check a subcontractor's background and decide to approve or reject the use of submitted subcontractor. A subcontractor may not be compensated for any work prior to the approval date of the subcontract agreement between the Contractor and the Subcontractor by TWDB.
- (d) The Respondent will be the only contact for TWDB and subcontractors. Respondent must list a designated point of contact for all TWDB and subcontractor inquiries.



## 2.4 CONTRACT TERM

The Services requested will be provided upon execution of the Contract through August 31, 2021. Contract extensions for this study will be granted only if the selected contractor is a state entity. Requests for extension must be submitted in writing to [contracts@twdb.texas.gov](mailto:contracts@twdb.texas.gov) no later than 60 days prior to the contract expiration date.

**Excess Obligations Prohibited:** The Contract is subject to termination or cancellation without penalty to TWDB, either in whole or in part, subject to the availability of state funds.

## 2.5 COMPENSATION

Available funding will be negotiated once a vendor is selected. Failure to arrive at mutually agreeable terms of a contract with the most qualified respondent will constitute a rejection of TWDB's offer and may result in subsequent negotiations with the next most qualified respondent. TWDB reserves the right to reject any or all responses.

The awarded vendor will only receive compensation once a Task has been completed, reviewed and accepted by TWDB and an invoice is submitted requesting funds for that approved Task.

## 2.6 LIQUIDATED DAMAGES

If the selected Contractor breaches its obligation to provide deliverables 1 – 8 in accordance with the schedule in Section 3.1, the selected Contractor will be assessed \$100.00 per day for each day of delay as liquidated damages. The parties agree that quantifying losses arising from the selected Contractor's delay is inherently difficult, and stipulate that the sum agreed upon for liquidated damages is not a penalty, but rather a reasonable measure of damages based on the parties' experience in the industry and the nature of the losses that may result from delay.

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# SECTION III – DELIVERABLES

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## 3.1 CONTRACT DELIVERABLES

### Task 1 – Literature review and assessment methodology

Deliverable is a draft chapter that must include the following:

- 1) A summary of published literature focusing on aspects that informed the assessment of environmental flow attainment in the Brazos, Trinity, and Neches river basins.
- 2) A description of the methodology to be used to assess environmental flow attainment under four flow scenarios: (i) current water use, (ii) future water use (partial utilization of permitted diversions), (iii) future water use (full utilization of permitted diversions), (iv) and naturalized flow.
- 3) For each river basin, a map and a table listing the WAM control points for which environmental flow standards have been defined, including the WAM control point number, the corresponding U.S. Geological Survey gauge number, gauge name, and contributing drainage area.
- 4) For each basin, a list of the metrics selected for assessing the attainment of instream flow standards.
- 5) For each basin, a list of the metrics selected for assessing the attainment of freshwater inflow standards.

Task 2 – Development of flow scenarios as described in Task 1 (for flow scenarios **not available for download** through the Texas Water Resources Institute, Texas A&M University).

Deliverables are:

- 1) A draft chapter that describes the flow scenarios downloaded through the Texas Water Resources Institute, the flow scenarios developed as part of this project, and the methodology used to develop the scenarios for each river basin.
- 2) Digital copies of all flow datasets that were downloaded or developed for each scenario for each basin.

Task 3 – Assessment of environmental flow attainment in the Brazos River Basin

Deliverables are:

- 1) A draft chapter that must include the following:
  - a. For each flow scenario considered, a summary of the attainment of the environmental flow standards by season, flow type (i.e., subsistence or pulse flows), and condition (dry, average, or wet).
  - b. A description of the key findings and interpretation of the results focusing on conditions under which attainment of the standards are met or not met. Include a discussion of the caveats or limitations of the method and model which should be taken into consideration when interpreting the results.
- 2) All datasets accessed, modified, created, and manipulated for the study, including shapefiles and WAM input files, must be provided on a flash drive.

Task 4 – Assessment of environmental flow attainment in the Trinity River Basin

Deliverables are:

- 1) A draft chapter that must include the following:
  - a. For each flow scenario considered, a summary of the attainment of the environmental flow standards by season, flow type (i.e., subsistence, pulse flows, or freshwater inflows to Galveston Bay), and condition (dry, average, or wet).
  - b. A description of the key findings and interpretation of the results focusing on conditions under which attainment of the standards are met or not met. Include a discussion of the caveats or limitations of the method and model which should be taken into consideration when interpreting the results.
- 2) All datasets accessed, modified, created, and manipulated for the study, including shapefiles and WAM input files, must be provided on a flash drive.

Task 5 – Assessment of environmental flow attainment in the Neches River Basin

Deliverables are:

- 1) A draft chapter that must include the following:
  - a. For each flow scenario considered, a summary of the attainment of the environmental flow standards by season, flow type (i.e., subsistence or pulse flows), and condition (dry, average, or wet).
  - b. A description of the key findings and interpretation of the results focusing on conditions under which attainment of the standards are met or not met. Include a discussion of the caveats or limitations of the method and model which should be taken into consideration when interpreting the results.

- 2) All datasets accessed, modified, created, and manipulated for the study, including shapefiles and WAM input files, must be provided on a flash drive.

#### Task 6 – Summarize key findings from Task 3 through Task 5

Deliverable is a draft chapter that must include the following:

- 1) A synthesis of the key findings.
- 2) Conclusions regarding conditions under which attainment of environmental flow standards are met or not met. Include a discussion of the caveats or limitations of the method and model which should be taken into consideration when interpreting the results.

#### Task 7 – Guidance summary on how findings of the study can be utilized by the Brazos, Trinity, and Sabine-Neches BBASCs

Deliverable is a draft chapter that must include the following:

- 1) Recommendations on how the Brazos BBASC can utilize the findings of the study.
- 2) Recommendations on how the Trinity-San Jacinto BBASC can utilize the findings of the study.
- 3) Recommendations on how the Sabine-Neches BBASC can utilize the findings of the study.

#### Task 8 – Draft and Final Report

Deliverables must include the following:

- 1) Digital datasets of the flow scenarios used and compiled as part of this study.
- 2) Three (3) hard copies and one digital version (PDF on flash drive) of the draft report submitted by the study completion date. The draft report must include all approved draft chapters from Tasks 1–6.
- 3) An appendix with TWDB comments and contractor responses in the final report.
- 4) Four (4) hard copies and one (1) digital version (PDF on flash drive) of the final report submitted within 60 days of the study completion date.
- 5) Limit the use of abbreviations in the report. If needed, add a list of acronyms at the front of the report.

#### Task 9 –Project Management

Deliverables must include the following:

- 1) Six (6) presentations to TWDB staff, one after the completion of each Task (i.e., 1–6). TWDB will provide comments that must be addressed.
- 2) One (1) in-person presentation at a stakeholder meeting approved by the TWDB for each of the three basins (i.e., Brazos, Trinity, and Neches).
- 3) Participation in meetings and conference calls with TWDB staff as requested.
- 4) Monthly progress reports to TWDB, that must include:
  - a. Descriptions of tasks completed and in-progress
  - b. Percent completion of tasks in-progress
  - c. Updates to overall project schedule as warranted
  - d. Invoices at the satisfactory completion of each task (i.e., upon the receipt of notice to proceed on the subsequent task).
- 5) Detailed schedule based on project milestones.

## SECTION IV – GENERAL INFORMATION

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### 4.1 RFQ REQUIREMENTS

A brief transmittal letter summarizing the key points of the Statement of Qualifications must accompany each response and must be signed by an authorized representative who is responsible for committing the firm's resources. The response, including attachments, must not exceed 19 pages. The font size must be no smaller than 12 point. Telephone, facsimile, mailed or hand delivered submissions will not be considered. **Please restate the question at the beginning of each response and provide a separate section for that response or indicate why no response is given.**

**A. Submittals:** The Respondent must submit one (1) electronic copy of the proposal in Portable Document Format (PDF) format, as follows:

- 1) ORIGINAL: One (1) complete ORIGINAL SOQ in Portable Document Format (PDF) submitted to TWDB email box: [purchasing@twdb.texas.gov](mailto:purchasing@twdb.texas.gov). SOQ pages should be numbered and contain an organized, paginated table of contents corresponding to the section and pages of the SOQ.
- 2) Pricing must **NOT** be included on any SOQ, as it is not being used as an evaluating measure.
- 3) The SOQ must be clearly marked **RESPONSE TO RFQ 580-20-RFQ-0019**.

**B. Contents:** The Respondent must submit all information listed below, in the order given, separated by labeled sheets, as the SOQ to this RFQ. The SOQ will only be considered if all items are submitted as required. Incomplete/late responses to this RFQ will not be considered.

- 1) CONTENT ITEM 1: Signed/dated Execution of Statement of Qualifications to the Request for Qualifications. (one (1) page limit; format as indicated in attached CONTENT ITEM 1)
- 2) CONTENT ITEM 2: Company Profile Summary and History (maximum two (2) pages). Response should include the following:
  - a. Company name, address, phone number, and legal status (corporation, partnership, joint venture, sole proprietorship)
  - b. Name and title of the person submitting the SOQ with the authority to bind the company
  - c. Name, phone number, and email address of a contact person for any questions on the SOQ
  - d. A description of the general nature of previous work, the number of years in business, size and scope of operation.
- 3) CONTENT ITEM 3: Names and resumes of Individuals - Submit a page listing the name of individuals who will work on the contract; submit separate resumes for each individual who will work on this project. **PLEASE NOTE: Resumes do NOT count towards page maximums.**

- 4) CONTENT ITEM 4: Historically Underutilized Businesses Subcontracting Plan. (up to nine (9) pages). **PLEASE NOTE: HUB-SUB Plans do NOT count towards page maximums.**
- 5) CONTENT ITEM 5: Name(s) and Social Security Number(s) (SSN) of each person with at least 25 percent ownership of the business entity submitting the RFQ (if applicable). (one (1) page limit)
- 6) CONTENT ITEM 6: Technical Approach. (maximum of 15 pages) and Declaration of Conflict of Interest
  - a. Technical approach for each task.
  - b. Schedule for each task and overall project.
  - c. Staff allocations for each task and overall project.
  - d. Deliverables that the TWDB will receive.
  - e. Task and expense budget for project.
  - f. Indicate contractor's abilities as listed in Section 2.2.

#### **4.2 PROPOSAL SUBMISSION**

- A. All responses must be received at TWDB by the deadline in the Schedule of Events. TWDB will not and cannot accept late submittals.
- B. Telephone, facsimile, mailed or hand delivered responses will not be accepted.
- C. Receipt of all addenda, if applicable, to this response should be acknowledged by returning a signed copy of each addendum with the submitted response.

***NOTE: Failure to return the required items with the response will result in rejection of your Statement of Qualifications.***

***TWDB will not be responsible for locating or securing information that is not included in your Statement of Qualifications.***

#### **4.3 DELIVERY OF SUBMISSION**

The SOQ may be submitted to TWDB via electronic delivery to the TWDB email box at [purchasing@twdb.texas.gov](mailto:purchasing@twdb.texas.gov).

#### **4.4 SCHEDULE OF EVENTS**

The solicitation process for this RFQ will proceed according to the following schedule:

##### **EVENT DATE (Central Daylight Time)**

Issue Solicitation	<b>MAY 19, 2020</b>
Deadline for Submitting Written Questions	<b>MAY 29, 2020, 5:00 PM</b>
Anticipated Release of Written Answers	<b>JUNE 2, 2020</b>
Deadline for Submission of Qualifications	<b>JUNE 15, 2020, 2:00 PM</b>
Expected Date of Award of Contract	<b>UPON EXECUTION</b>
Expected Contract Start Date	<b>UPON EXECUTION</b>

#### **4.5 REVISIONS TO SCHEDULE**

TWDB reserves the right to change the dates in the Schedule of Events above upon written notification to prospective Respondent(s) as an addendum posted on the Electronic State Business Daily.

#### **4.6 RESPONSE SUBMITTAL**

All submitted proposals become the property of TWDB after the submittal deadline. Responses submitted constitute offers for a period of ninety (90) days or until selection is made by TWDB, whichever occurs first.

#### **4.7 PROPOSAL COSTS**

Respondents are responsible for all costs incurred in the preparation and delivery of the Statement of Qualifications to TWDB.

#### **4.8 TRAVEL EXPENSES**

Any travel requirements under this contract may include travel throughout the State of Texas to perform the tasks therein. Any and all travel expenses will be in accordance with the state travel and per diem allowances detailed at <https://fmx.cpa.texas.gov/fmx/travel/>.

#### **4.9 MEETINGS**

Any meetings and or/conference calls must be held at mutually agreed dates and times on regular business days, Monday through Friday, during regular business hours (8:00 AM – 5:00 PM).

#### **4.10 INQUIRIES**

##### **A. Contact**

All requests, questions, or other communications about this Solicitation must be made in writing to the TWDB's Purchasing Department, addressed to the person listed below.

Name            Angela Wallace, Contract Administration Manager, CTPM, CTCM  
Address        1700 N. Congress Ave., Austin, TX 78701  
Email           [angela.wallace@twdb.texas.gov](mailto:angela.wallace@twdb.texas.gov) with a copy to [purchasing@twdb.texas.gov](mailto:purchasing@twdb.texas.gov).  
Subject:        Ensure the RFQ number is included in all correspondence.

##### **B. Clarifications**

TWDB will allow written requests for clarification of this Solicitation. Questions may be e-mailed to the contact listed above. Respondents' names will be removed from questions when the written answers are released. Questions must be submitted in the following format. Submissions that deviate from this format may not be accepted:

- a) Identifying Solicitation number
- b) Section number
- c) Text of passage being questioned
- d) Question
- e) Company name, address, phone number, e-mail address, and name of contact person

***Note: The deadline for submitting questions is noted in Section 4.4 above.***

### C. Responses

All accepted questions will result in a written response posted to the ESBD at: <http://www.txsmartbuy.com/sp>. Responses will be posted as an Addendum to the Solicitation. It is Respondent's responsibility to check the ESBD for updated responses.

### D. Prohibited Communications

On issuance of this Solicitation, except for the written inquiries described in Section 4.10 above, TWDB and its representative(s) or partners will not answer questions or otherwise discuss the contents of this Solicitation with any potential Respondent or their representative(s). Attempts to ask questions by phone or in person will not be allowed or recognized as valid. Failure to observe this restriction may disqualify the Respondent. Respondent must rely only on written statements issued through or by TWDB purchasing staff. This restriction does not preclude discussions between affected parties for the purposes of conducting business unrelated to this Solicitation.

## 4.11 PROPOSAL EVALUATION AND AWARD

- A. TWDB is not obligated to accept the lowest priced response but will make an award to the Respondent that provides the "best value" to the State of Texas, as defined by Texas Government Code § 2155.074.
- B. A committee established by TWDB (including TWDB employees) will evaluate the Statement of Qualifications.

The evaluation committee will determine best value by applying the following criteria:

Points Available	Evaluation Criteria
10	Organization of Proposal
10	Experience in Providing Service Requested
50	Technical Approach
20	Proposed Approach for Deliverables
10	Proposed Organization and Management of Project
<b>100</b>	<b>Total Points Possible</b>

- C. The evaluation committee will determine if a Best and Final Offer (BAFO) is necessary. Award of a Contract may be made without a BAFO. TWDB may, at its discretion, elect to have Respondents provide oral presentations and respond to inquiries from the evaluation committee related to their proposal. A request for a BAFO is at the sole discretion of TWDB and will be extended in writing.
- D. Past Performance: A Respondent's past performance will be measured based on applicable provisions of Texas Government Code §§ 2155.074, 2155.075, 2156.007, 2157.003, and 2157.125. Respondents may fail this selection criterion for any of the following:
  - 1) A score of C or less under current scoring system in the Vendor Performance Tracking System;
  - 2) Having repeated negative Vendor Performance Reports for the same reason; or
  - 3) Having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.).

Contractor performance information is located on the CPA web site at:  
<http://www.txsmartbuy.com/vpts>.

#### **4.12 CONTRACT AWARD**

It is the intent of the TWDB to award one (1) contract under this Solicitation. An award notice will be sent to the selected Respondent. Any award is contingent upon the successful negotiation of final contract terms and upon approval of the Executive Administrator of the TWDB. Negotiations are confidential and not subject to disclosure to competing Respondents unless and until an agreement is reached. If contract negotiations cannot be concluded successfully, TWDB may negotiate a contract with the next highest scoring Respondent or may withdraw this Solicitation.

***NOTE: Solicitation Responses are subject to the Texas Public Information Act, Texas Government Code Chapter 552.***

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### **SECTION V – GENERAL TERMS AND CONDITIONS**

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#### **5.1 GENERAL TERMS AND CONDITIONS**

Any contract awarded as a result of this RFQ will contain the general terms and conditions provided in this document. Subcontractors must also comply, if applicable. The Contractor is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state. In addition, any contract awarded as a result of this RFQ will be governed, construed, and interpreted under the laws of the State of Texas. The factors listed in Texas Government Code §§ 2155.074, 2155.144, 2156.007, and 2157.003 will also be considered in making an award when specified. Any legal actions must be filed in Travis County, Texas.

#### **5.2 PATENTS OR COPYRIGHTS**

The Contractor agrees to protect the State and TWDB from claims involving infringement of patents or copyrights. TWDB will not consider any RFQ that bears a copyright. RFQs will be subject to the Texas Public Information Act, Texas Government Code Chapter 552, and may be disclosed to the public upon request. Subject to the Act, Respondents may protect trade and confidential information from public release. Trade secrets or other confidential information submitted as part of a SOQ must be clearly marked in **boldface type and at least 14-point font**.

#### **5.3 CONTRACTOR ASSIGNMENTS**

Respondent hereby assigns to TWDB any and all claims for overcharges associated with the contract arising under the antitrust laws of the United States, 15 U.S.C.A. Section 1 et seq. (1973), and the antitrust laws of the state of Texas, Tex. Bus. & Com. Code Sec. 15.01 et seq. (1967).

#### **5.4 CONTINUING PERFORMANCE**

Any contract(s) awarded as a result of this RFQ must include reporting responsibilities related to Historically Underutilized Business (HUB) subcontracting. Awarded contractors may not change any subcontractor without submitting a revised HUB Subcontracting Plan (HSP) to TWDB. Any change to a subcontractor and revised HSP must be approved in writing by TWDB prior to implementation.



## **5.5 HISTORICALLY UNDERUTILIZED BUSINESSES SUBCONTRACTING PLAN**

It is the policy of TWDB to make a good faith effort to achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, Chapter 2161, Subchapter F, and HUB Rules promulgated by the Comptroller of Public Accounts (CPA), 34 TAC, Chapter 20.

HUBs are strongly urged to respond to this RFQ. Under Texas law, state agencies are required to make a good faith effort to assist HUBs in receiving certain percentages of the total value of contract awards. The contractors who meet the qualifications are strongly encouraged to apply for certification as HUBs.

ALL CONTRACTORS RESPONDING TO THIS RFQ, INCLUDING THOSE THAT ARE HUB CERTIFIED OR THOSE WHO DO NOT PLAN TO SUBCONTRACT, MUST COMPLETE A HUB SUBCONTRACTING PLAN (HSP) IN ACCORDANCE WITH THE STATE'S POLICY ON UTILIZATION OF HUBs. THE HSP MUST BE INCLUDED AS PART OF THE PROPOSAL TO THIS RFQ. FAILURE TO COMPLETE THE HSP AS INSTRUCTED MAY RESULT IN DISQUALIFICATION OF THE PROPOSAL FROM CONSIDERATION. Please review the HSP forms carefully and allow sufficient time to identify and contact HUBs and allow them to respond. Note that the contractors must demonstrate a good faith effort to contract with new HUBs if currently proposed HUBs have performed as subcontractors to the contractor for more than five (5) years. If the contractor does not plan to subcontract, the contractor must state that fact in their plan. The completed plan will become part of the contract that may be awarded as a result of this RFQ.

## **5.6 HUB RESOURCES AVAILABLE**

A list of certified HUBs is available on the Texas Comptroller of Public Accounts (CPA) Web site at: <https://mycpa.cpa.state.tx.us/tpasscmblsearch/tpasscmblsearch.do>. For additional information, contact the CPA's HUB program office at [StatewideHUBProgram@cpa.texas.gov](mailto:StatewideHUBProgram@cpa.texas.gov). If contractors know of any businesses that may qualify for certification as a HUB, they should encourage those businesses to contact the CPA HUB program office.

## **5.7 REQUIRED AFFIRMATIONS AND CERTIFICATIONS**

Submitting a Response (CONTENT ITEM 1 - Execution of Response to the Request for Qualifications) with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted response or any resulting contract(s). By signing CONTENT ITEM 1, Respondent hereby represents and warrants that:

- A. **Dealings with Public Servants:** Pursuant to Texas Government Code § 2155.003, Respondent certifies that the individual or business entity named in its proposal has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted proposal;
- B. **Antitrust:** In accordance with Texas Government Code § 2155.005, neither Respondent nor the firm, corporation, partnership, or institution represented by the Respondent, or anyone acting for such firm, corporation, partnership or institution, has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Texas Business and Commerce Code Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the contents of its proposal to any competitor or any other person engaged in same line of business as the Respondent;

- C. **Financial Participation Prohibited.** Pursuant to Texas Government Code § 2155.004(a), Respondent certifies that neither Respondent or any person or entity represented by Respondent has received compensation from the TWDB or any agency of the State of Texas for participation in the preparation of the specifications for this proposal. Pursuant to Texas Government Code § 2155.004(b), Respondent certifies that the individual or business entity named in this bid or response is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
- D. **Child Support Obligation.** Under Texas Family Code § 231.006, Respondent certifies that the individual or business entity named in its response is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate;
- E. **Prior Disaster Relief Contract Violation.** Texas Government Code §§ 2155.006 and 2261.053 prohibit state agencies from accepting a Response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster occurring after September 24, 2005, as defined by Texas Government Code § 418.004. Under Texas Government Code §§ 2155.006 and 2261.053, Contractor certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- F. **Debts and Delinquencies.** Respondent agrees that any payments due under the contract will be applied towards any debt or delinquency that is owed to the State of Texas, including but not limited to delinquent taxes, delinquent student loan payments and child support;
- G. **Executive Head of a State Agency.** Under Texas Government Code § 669.003, Respondent certifies that it does not employ, or has disclosed its employment of, any former executive head of the TWDB. If § 669.003 applies, Respondent must provide the following information in its Response:
- |                                       |       |
|---------------------------------------|-------|
| Name of Former Executive:             | _____ |
| Name of State Agency:                 | _____ |
| Date of Separation from State Agency: | _____ |
| Position with Respondent:             | _____ |
| Date of Employment with Respondent:   | _____ |
- H. **Suspension and Debarment.** Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed in the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the U.S. General Services Administration.
- I. **Buy Texas.** In accordance with Texas Government Code § 2155.4441, Respondent agrees that during the performance of a contract for services it will purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
- J. **Disaster Recovery Plan.** Upon request of TWDB, Respondent must provide descriptions of its business continuity and disaster recovery plans.
- K. **Entities that Boycott Israel.** Pursuant to Texas Government Code § 2270.002, Respondent certifies that either (i) it meets one of the exemption criteria under § 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from

this solicitation. Respondent must state any facts that make it exempt from the boycott certification in its Response.

- L. **E-Verify Program.** Respondent certifies that for contracts for services, Respondent will utilize the U.S. Department of Homeland Security's E-Verify system during the term of any contract resulting from this solicitation to determine the eligibility of: (1) All persons employed by Respondent to perform duties within Texas; and (2) all persons, including subcontractors, assigned by Respondent to perform work pursuant to the contract within the United States of America.
- M. **Excluded Parties.** Respondent certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
- N. **Foreign Terrorist Organization.** Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Texas Government Code § 2252.152.
- O. **Lobbying Prohibition.** Respondent represents and warrants that TWDB's payments to Respondent and Respondent's receipt of appropriated or other funds under the contract are not prohibited by Texas Government Code §§ 556.005 or 556.0055, related to the prohibition on payment of state funds to a lobbyist or for lobbying activities.

## **5.8 ADDITIONAL TERMS**

Any terms and conditions attached to your SOQ will not be considered unless specifically referred to in this RFQ and may result in disqualification of your SOQ.

## **5.9 DISPUTE RESOLUTION**

The dispute resolution process provided for in Texas Government Code Chapter 2260 must be used by TWDB and the Respondent to attempt to resolve all disputes arising under any contract resulting from this solicitation.

## **5.10 NON-APPROPRIATION OF FUNDS**

Any contract resulting from this solicitation is contingent on the continued availability of lawful appropriations by the Texas Legislature. If the Texas Legislature fails to continue funding for the payments due under an order referencing the contract, the order will terminate as of the date that the funding expires, and TWDB will have no further obligation to make any payments.

## **5.11 PUBLIC INFORMATION ACT**

Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Texas Government Code Chapter 552 (the "Public Information Act"). In accordance with Texas Government Code § 2252.907, Respondent is required to make any information created or exchanged with the State pursuant to the solicitation or contract and not otherwise excepted from disclosure under the Public Information Act available in a format that is accessible to the public at no additional charge to the State.

## **5.12 GOVERNING LAW AND VENUE**

Any contract resulting from this solicitation will be governed by the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under a contract resulting from this solicitation is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the TWDB.

### **5.13 ETHICS**

Under Texas Government Code § 2155.003, an individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the state of Texas Procurement Manual, which outlines the ethical standards required of public purchasers, employees, and bidders who interact with public purchasers in the conduct of state business, and with any opinions of or rules adopted by the Texas Ethics Commission. Entities who are interested in seeking business opportunities with the state must be mindful of these restrictions when interacting with public purchasers of TWDB or purchasers of other state agencies. Specifically, a TWDB employee may not have an interest in, or in any manner be connected with a contract or bid for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation.

### **5.14 FRAUD STATEMENT**

Respondents understand that the TWDB does not tolerate any type of fraud. The TWDB's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Contractors are expected to report any possible fraudulent or dishonest acts, waste, or abuse to the agency's Internal Audit division at 512-463-7978 or [Nicole.Campbell@twdb.texas.gov](mailto:Nicole.Campbell@twdb.texas.gov).

### **5.15 CONFLICT OF INTEREST**

A Respondent will not be selected if there is a conflict of interest that will or may arise during the performance of its obligations under the contract. For this reason, the submission in response to this RFQ must disclose all business interests and all relationships that could reasonably be considered to pose possible conflicts of interest in the respondent's performance of the contract obligations. In addition, respondents must represent and warrant in the response to this RFQ and in the contract that in the performance of services under the contract, (1) Respondent does not have and will not have any actual or potential conflict of interest, and (2) Respondent will take whatever reasonable actions may be necessary and prudent to avoid even the appearance of impropriety.

### **5.16 RIGHT TO AUDIT**

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under a contract or indirectly through a subcontract under the contract. The acceptance of funds under a contract or subcontract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

### **5.17 CONTRACT ADMINISTRATION**

TWDB will designate a project manager for the contract. The project manager will serve as the point of contact between the TWDB and the selected contractor. The TWDB's project manager will supervise the TWDB's review of the contractor's technical work, deliverables, draft reports, final report, payment requests, schedules, financial and budget administration, and similar matters. The project manager does not have any express or implied authority to vary the terms of the contract,

amend the contract in any way, or waive strict performance of the terms or conditions of the contract.

#### **5.18 CONTRACT AMENDMENT/TERMINATION**

This contract may be altered or amended by mutual written consent or terminated by the Executive Administrator at any time by written notice to the contractor. Upon receipt of such termination notice, Contractor must, unless the notice directs otherwise, immediately discontinue all work in connection with the performance of the contract and promptly cancel all existing orders insofar as such orders are chargeable to the contract. Contractor must submit a statement showing in detail the work performed under the contract to the date of termination. The TWDB will pay Contractor promptly that proportion of the prescribed fee, which applies to the work actually performed under the Contract, less all payments that have been previously made. Thereupon, copies of all work accomplished under the Contract must be delivered to the TWDB.

The State Procurement Division (SPD) has given the TWDB delegation authority to move forward with this solicitation and contract award. However, please note that the SPD may also terminate the contract awarded from this RFQ, with a 30-day written notice, upon an award by the SPD for this same service.

#### **5.19 STOP WORK ORDER**

The Executive Administrator may issue a Stop Work Order to the contractor at any time. Upon receipt of such order, the contractor must discontinue all work under the contract and cancel all orders pursuant to the contract, unless the order directs otherwise. If the Executive Administrator does not issue a Restart Order within 60 days after Contractor receipt of the Stop Work Order, the Contract is considered terminated in accordance with the foregoing provisions.

#### **5.20 CONTRACTOR PERFORMANCE**

State agencies are required to report a contractor's performance on any purchase of \$25,000 or more from contracts administered by the TWDB or any other purchase made through an agency's delegated authority or a purchase made pursuant to the authority in Government Code, Title 10, Subtitle D or a purchase exemption from CPA/TPASS procurement rules and procedures.

#### **5.21 DEFAULT**

If the contractor is found to be in default under any provision of the contract, TWDB may cancel the contract without notice and either re-solicit or award the contract to the next best responsive and responsible Respondent. In the event of abandonment or default, the contractor will be responsible for paying damages to TWDB including but not limited to re-procurement costs, and any consequential damages to the state of Texas or TWDB resulting from the contractor's non-performance. The defaulting contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed.

#### **5.22 FORCE MAJEURE**

Neither Respondent nor TWDB is liable to the other for any delay in, or failure of performance, of any requirement included in the contract resulting from this RFQ caused by force majeure. The existence of such causes of delay or failure will extend the period of performance until after the causes of delay or failure have been removed, provided the non-

performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing of the existence of such force majeure, or otherwise waive this right as a defense.

### **5.23 OWNERSHIP/INTELLECTUAL PROPERTY, INCLUDING RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE**

For the purposes of the contract, the term “Work” is defined as all reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research, materials, and intellectual property or other property developed, produced, or generated in connection with the contract. All work performed pursuant to the contract is made the exclusive property of TWDB. All right, title and interest in said property vests in TWDB upon creation and will be deemed to be a work for hire and made in the course of the services rendered pursuant to the contract. To the extent that title to any such work may not, by operation of law, vest in TWDB, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to TWDB. TWDB will have the right to obtain and to hold in its name any and all patents, copyrights, registrations, or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. The contractor must give TWDB and/or the state of Texas, as well as any person designated by TWDB and/or the state of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to the contractor for the services rendered under the contract.

Contractor must maintain and retain supporting fiscal and any other documents relevant to showing that any payments under the contract funds were expended in accordance with the laws and regulations of the state of Texas, including but not limited to, requirements of the Comptroller of the state of Texas and the State Auditor. The contractor must maintain all such documents and other records relating to the contract and the State’s property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. The contractor must make available at reasonable times, upon reasonable notice, and for reasonable periods, all documents and other information related to the “Work” as defined as work products developed by the contractor and subcontractor using funds provided under the contract or otherwise rendered in or related to the performance in whole or part of the contract, including but not limited to reports, drafts of reports, or other material, data, drawings, studies, analyses, notes, plans, computer programs and codes, or other work products, whether final or intermediate. The contractor and the subcontractor must provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. The contractor must retain all work and other supporting documents pertaining to the contract, for purposes of inspecting, monitoring, auditing, or evaluating by TWDB and any authorized agency of the state of Texas, including an investigation or audit by the State Auditor.

Contractor must cooperate with any authorized agents of the state of Texas and must provide them with prompt access to all of such State’s work as requested. Contractor’s failure to comply with this Section will constitute a material breach of the contract and will authorize the TWDB and the State of Texas to immediately assess appropriate damages for such failure. Pursuant to Texas Government Code § 2262.003, the acceptance of funds by the contractor or any other entity or

person directly under the contract, or indirectly through a subcontract under the contract, constitutes acceptance of the authority of the State Auditor to conduct an audit or investigation in connection with those funds.

#### **5.24 DRUG-FREE WORKPLACE POLICY**

The contractor must comply with the applicable provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.) and maintain a drug-free work environment. The final rule detailing requirements for drug-free work place (grants) issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference, and Contractor must comply with the relevant provisions thereof, including any amendments to the final rule.

#### **5.25 SMOKE FREE POLICY**

TWDB has a smoke free agency policy. The policy reflects our commitment to providing a healthy environment for our employees and visitors. This policy prohibits smoking within any state building or on the grounds. Contractor, by acceptance of this contract, agrees to abide by this policy when on the property of TWDB.

#### **5.26 INSURANCE AND OTHER SECURITY**

Contractor represents and warrants that it will obtain and maintain for the term of the Contract all insurance coverage required to ensure proper fulfillment of the Contract and its liabilities thereunder, including but not limited to professional liability coverage.

The contractor represents and warrants that all the above coverage is with companies licensed in the state of Texas, with "A" rating from A.M. Best, and authorized to provide the corresponding coverage. The contractor represents and warrants that it will maintain the above insurance coverage during the term of the contract and must provide TWDB with an executed copy of the policies immediately upon request.

#### **5.27 ORDER PRECEDENCE**

In the event of conflicts or inconsistencies between the contract and its exhibits or attachments, such conflicts or inconsistencies will be resolved by reference to the documents in the following order of priority: Signed Contract (or Notice of Award), Attachments to the Contract (or Notice of Award), Request for Qualifications, and Respondent's Response to Request for Qualifications.

#### **5.28 PROPRIETARY INFORMATION**

The TWDB is a government agency subject to the Texas Public Information Act (PIA), Chapter 552, Texas Government Code. The Proposal and other information submitted to the TWDB by the Respondent are subject to release as public information. The Proposal and other submitted information will be presumed to be subject to disclosure unless a specific exception to disclosure under the PIA applies. If it is necessary for the Respondent to include proprietary or otherwise confidential information in its Proposal or other submitted information, the Respondent must clearly label that proprietary or confidential information and identify the specific exception to disclosure in the PIA. Merely making a blanket claim that the entire Proposal is protected from disclosure because it contains some proprietary information is not acceptable and will make the entire Proposal subject to release under the PIA. In order to trigger the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Proposal that are considered by the Respondent to be proprietary or confidential

must be clearly labeled as described above. Any information which is not clearly identified as proprietary or confidential will be deemed to be subject to disclosure pursuant to the PIA.

### **5.29 PUBLIC DISCLOSURE**

No public disclosures or news releases pertaining to the contract may be made without prior written approval of TWDB.

### **5.30 TAXES**

The contractor represents and warrants that it will pay all taxes or similar amounts resulting from the contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of the contractor or its employees. TWDB is not liable for any taxes resulting from the contract.

### **5.31 INFRINGEMENTS**

- A. The contractor will indemnify and hold harmless the state of Texas and the TWDB, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES, from any and all third-party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. THE CONTRACTOR AND THE TWDB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. THE CONTRACTOR IS LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE MUST BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.
- B. The contractor will have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without the contractor's written approval, (iii) any modifications made to the product by the contractor pursuant to the TWDB's specific instructions, (iv) any intellectual property right owned by or licensed to the TWDB, or (v) any use of the product or service by the TWDB that is not in conformity with the terms of any applicable license agreement.
- C. If the contractor becomes aware of an actual or potential claim, or the TWDB provides the contractor with notice of an actual or potential claim, the contractor may (or in the case of an injunction against TWDB, will), at the contractor's sole option and expense (i) procure for the TWDB the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that the TWDB's use is non-infringing.

### **5.32 TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY**

- A. THE CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, THE CONTRACTOR WILL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF THE CONTRACTOR'S AND THE CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. THE CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE TWDB AND/OR THE STATE WILL



NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY TWDB.

- B. THE CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS TWDBS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. THE CONTRACTOR IS LIABLE FOR ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE MUST BE COORDINATED WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT, AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. THE CONTRACTOR AND THE TWDB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

### **5.33 REMEDIES**

All remedies available to TWDB for breach or anticipatory breach of the contract by the contractor are cumulative and may be exercised concurrently or separately and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies.

Liquidated damages, actual damages, cost projections, injunction relief and/or performance bonds may also be invoked either separately or combined with any other remedy in accordance with applicable law.

### **5.34 INTERESTED PARTIES**

When applicable, all non-governmental contractors are required to submit a Certificate of Interested Parties at the time the signed contract is submitted to the TWDB. The Certificate of Interested Parties (Form 1295) is a sworn statement by the contracting business entity and must be submitted even if there is no interested party in the transaction. The Form 1295 and instructions for completing and submitting the form are available at: <https://www.ethics.state.tx.us/tec/1295-Info.htm>. The TWDB is prohibited from executing a contract unless the contracting business entity submits a completed Form 1295. Any contract resulting from a TWDB procurement with a business entity will be void if the Certificate of Interested Parties is not submitted within 30 days of submitting an executed contract.

### **5.35 CONFIDENTIALITY AND SECURITY**

Contractor must maintain and protect any information it receives, compiles, or creates as a result of the Contract in accordance with any federal, state, or local laws and regulations that apply. Contractor must establish a method to secure the confidentiality of records and other information relating to the TWDB in accordance with applicable federal and state laws, rules, and regulations.

**CONTENT ITEM 1**  
**EXECUTION OF RESPONSE**  
to the  
**REQUEST FOR QUALIFICATIONS**

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Company Name: \_\_\_\_\_

Contract Manager: \_\_\_\_\_

Address: \_\_\_\_\_

Vendor ID: \_\_\_\_\_

(aka: Texas Taxpayer ID)

Phone Number: \_\_\_\_\_

E-Mail: \_\_\_\_\_

I, \_\_\_\_\_, am the above-referenced company's representative and I am authorized to submit this response and sign future contract documents. By signing below, the representative certifies that if a Texas address is shown as the address, the respondent qualifies as a Texas Bidder as defined in 34 TAC Rule 20.32(68).

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title:

**CONTENT ITEM 2**  
**COMPANY PROFILE SUMMARY AND HISTORY**

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**CONTENT ITEM 3**  
**RESUMES OF INDIVIDUALS**

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## **CONTENT ITEM 4**

### **HISTORICALLY UNDERUTILIZED BUSINESSES SUBCONTRACTING PLAN**

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Please see SECTION IV, GENERAL INFORMATION, 4.1.B, Item 4

All HUB Subcontracting Plan Forms must be completed and submitted with the Response.

The forms are entitled and can be found at:

<http://comptroller.texas.gov/procurement/prog/hub/hub-subcontracting-plan/>

HUB Subcontracting Plan Form

HUB Subcontracting Plan Form, SECTION 2 continuation sheet

HUB Subcontracting Plan Good Faith Effort - Method A (Attachment A)

HUB Subcontracting Plan Good Faith Effort - Method B (Attachment B)

HUB Subcontracting Opportunity Notification Form

**CONTENT ITEM 5**  
**OWNERSHIP OF BUSINESS ENTITY**  
**Name(s) and Social Security Number(s) of Each Person with at least**  
**25 Percent Ownership of the Business Entity Submitting the RFQ**  
**(if applicable)**

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\_\_\_\_\_  
Name

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Name

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Name

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Name

\_\_\_\_\_  
Social Security Number

**CONTENT ITEM 6**  
**TECHNICAL APPROACH**  
(if applicable)

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